

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

VERNON WAYNE McNEAL,

Plaintiff,

v.

LOCKIE, ERVIN, CHATHAM, and  
VAN LEER,

Defendants.

No. 2:05-cv-00441-GEB-EFB

**ORDER DENYING PLAINTIFF'S  
RECONSIDERATION REQUEST**

On January 26, 2016, Plaintiff filed an objection, in which he seeks reconsideration of the Magistrate Judge's January 12, 2016 order denying his request for a waiver of witness fees. (Pl.'s Mot. & Decl. Objecting to Order, ECF No. 248.) The Magistrate Judge denied Plaintiff's request in that order stating, *inter alia*:

[P]laintiff's in forma pauperis status does not provide the court with authority to waive witness fees and travel expenses. Tedder v. Odel, 890 F.2d 210, 211 (9th Cir. 1989). In extraordinary circumstances, it may be possible for the court to order payment of witness fees out of its non-appropriated fund. See Giraldez v. Prebula, No. S-01-2110 LKK/EFB, 2012 U.S. Dist. LEXIS 54620, at \*3-5 (E.D. Cal. Apr. 18, 2012) (citing United States Administrative Office Guide to Judiciary Policy, Vol. 13, § 1220); Whitfield v. Hernandez, No. 1:13-cv-0724-JLT, 2015 U.S. Dist. LEXIS 154013, at \*3-4 (Nov. 12, 2015). Plaintiff has not presented extraordinary

1 circumstances here. He has provided no  
2 explanation of why each unincarcerated  
3 witness is necessary. Many of plaintiff's  
4 proposed witnesses also appear on defendants'  
5 witness list and plaintiff will be permitted  
6 to question any witness defendants present.  
7 ECF No. 180 at 12-15. The court's non-  
8 appropriated fund is simply too meager to  
9 cover the witness expenses for every indigent  
10 litigant in the district. Accordingly,  
11 plaintiff's request for a waiver of witness  
12 fees is denied.

13 (Order 1:23-2:7, ECF No. 242.)

14 Plaintiff avers in support of his objection, in  
15 relevant part:

16 [The Magistrate Judge's January 12, 2016  
17 Order] on page 2 lines 3-4 state[s] that  
18 "Many of plaintiff's proposed witnesses also  
19 appear on defendants['] witness list.  
20 Plaintiff object[s] to this. Plaintiff's list  
21 ha[s] doctors that have treated plaintiff.  
22 Defendants['] list does not. Defendants[']  
23 witness Chief Medical Executive Dr. Swingle[]  
24 is what her title . . . stat[es,] an  
25 executive[, who] has never examine[d]  
26 plaintiff about injuries attach[ed] to this  
27 excessive force. This presents extraordinary  
28 circumstances. Plaintiff['s] witnesses are  
doctors.

Plaintiff is requesting that [the  
Court[] make non-appropriated fund[s]  
available for Dr. Miller (H.D.S.P.) for  
testimony about plaintiff's testicle injury.  
Dr. Jackson (Corcoran) for testimony about  
plaintiff's neck injury and Dr. Rouch NP-C  
(Corcoran) for testimony about plaintiff's  
left shoulder injury. These three doctors  
do[] not appear on defendants['] witness  
list.

(Pl.'s Decl. ISO Obj. ¶¶ 4-5, ECF No. 248 (paragraph numbers  
omitted).)

Local Rule 303(f) states: "[t]he standard that the  
assigned Judge shall use in [reconsideration of a Magistrate  
Judge's ruling] is the 'clearly erroneous or contrary to law'

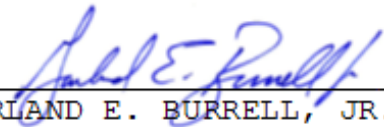
1 standard set forth in 28 U.S.C. § 636(b)(1)(A).” “A [M]agistrate  
2 [J]udge’s factual findings are ‘clearly erroneous’ when the  
3 district court is left with the definite and firm conviction that  
4 a mistake has been committed.” Mackey v. Frazier Park Pub. Util.  
5 Dist., No. 1:12-CV-00116-LJO-JLT, 2012 WL 5304758, at \*2 (E.D.  
6 Cal. Oct. 25, 2012) (quoting Sec. Farms v. Int’l Bhd. of  
7 Teamsters, 124 F.3d 999, 1014 (9th Cir. 1997)). “An order ‘is  
8 contrary to law when it fails to apply or misapplies relevant  
9 statutes, case law, or rules of procedure.’” Id. (quoting Knutson  
10 v. Blue Cross & Blue Shield of Minn., 254 F.R.D. 553, 556 (D.  
11 Minn. 2008)).

12 Plaintiff has not shown that the Magistrate Judge’s  
13 decision denying his request to waive witness fees was clearly  
14 erroneous or contrary to law. “The magistrate judge correctly  
15 ruled that 28 U.S.C. § 1915, the in forma pauperis statute, does  
16 not waive payment of fees or expenses for witnesses.” Dixon v.  
17 Ylst, 990 F.2d 478, 480 (9th Cir. 1993) (citing Teddler v. Odel,  
18 890 F.2d 210, 211-12 (9th Cir. 1989)). Further, although this  
19 Court has a non-appropriated fund, and General Order 510  
20 prescribes a procedure whereby “pro bono counsel appointed in  
21 indigent pro se civil cases” may “request reimbursement from the  
22 Court’s Non Appropriated Fund . . . [for] certain expenses[,]”  
23 Plaintiff has not shown that this General Order governs his  
24 request since he is unrepresented. See Antonetti v. Dist. Court,  
25 No. 3:10-cv-00158-LRH-WGC, 2013 U.S. Dist. LEXIS 20124, at \*14  
26 (Feb. 13, 2013) (“While it is true that the District of Nevada,  
27 like the [Eastern District of California] has a ‘non-appropriated  
28 fund,’ distributions from that fund may be made to reimburse out-

1 of-pocket expenses *incurred by court-appointed attorneys*. Since  
2 no attorney has been appointed for Plaintiff, this provision is  
3 seemingly unavailable for the provision of . . . witness fees in  
4 this case."). "The availability of limited non-appropriated funds  
5 does not translate into a generalized right for a pro se litigant  
6 to have his costs of litigation paid out of these funds."  
7 Whitfield v. Hernandez, No. 1:13-cv-0724-JLT, 2015 U.S. Dist.  
8 LEXIS 154013, at \*3 (E.D. Cal. Nov. 12, 2015).

9 For the stated reasons, Plaintiff's objection, seeking  
10 reconsideration of the Magistrate Judge's January 12, 2016 order  
11 is DENIED.

12 Dated: February 5, 2016

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16 GARIAND E. BURRELL, JR.  
17 Senior United States District Judge  
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